

Supreme Court, U.S.

FILED

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No.

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IN THE SUPREME COURT OF THE UNITED STATES

HOWARD PAUL GUIDRY,
Respondent,

v.

DOUG DRETKE, Director, Texas Department of
Criminal Justice, Correctional Institutional Division
Petitioner.

On Petition For Writ of Certiorari
to the Fifth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Capital Case

QUESTIONS PRESENTED

1. Whether implicit credibility determinations made by the state court in deciding whether a defendant invoked his Fifth Amendment right to counsel are factual determinations entitled to a presumption of correctness on federal habeas review.
2. Whether the absence of explicit credibility determinations by the state court is sufficient to constitute clear and convincing evidence rebutting the presumption of correctness attached to the state court's underlying explicit factual finding on federal habeas review.
3. Whether a federal habeas court has discretion to grant an evidentiary hearing for the sole purpose of re-evaluating the credibility of witnesses who testified previously in state court proceedings.

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PETITION FOR CERTIORARI

The court of appeals below erroneously held that federal habeas relief was warranted on Respondent Howard Paul Guidry's¹ claim that his confession was obtained in violation of his Fifth Amendment right to counsel. The Fifth Circuit's decision directly conflicts with the AEDPA², as well as jurisprudence of this Court and other courts of appeals interpreting this statute. As a result, the Court should grant this petition to resolve the conflict and address the important, relevant questions of federal law.

OPINION BELOW

The Fifth Circuit Court of Appeals affirmed the district court's decision conditionally granting federal habeas relief on January 14, 2005. *Guidry v. Dretke*, 347 F.3d 306 (5th Cir. 2005); *see also* Appendix A.

JURISDICTION

The Fifth Circuit denied the Director's motion for rehearing on October 25, 2005. *Guidry v. Dretke*, __ F.3d __, 2005 WL 2757502 (5th Cir. 2005); *see also* Appendix B. Thus, the Director's petition for writ of certiorari is timely filed on or before January 23, 2006. SUP. CT. R. 13.3 (West 2005). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

¹ Respondent will be referred to as "Guidry," and Petitioner will be referred to as "the Director."

² Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. 104-132, 110 Stat. 1214 (1996)

FEDERAL STATUTES INVOLVED

(d) "An application for writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim -

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

(e)(1) In a proceeding instituted by an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254 (d) & (e).

STATEMENT OF THE CASE

I. Facts of the Crime

The panel opinion succinctly summarized the facts relating to the instant offense:

Farah Fratta was murdered on 9 November 1994; her husband, Robert Fratta, had hired Joseph Prystash to kill her. (Each received the death penalty.) During a custodial interrogation approximately four months after Farah Fratta's murder, Guidry confessed to

shooting Farah Fratta and leaving the scene with Prystash. At Guidry's trial, his confession, as well as hearsay testimony against Guidry's interest by Prystash's girlfriend, Mary Gipp, established that, for \$1000, Guidry agreed to help Prystash kill Farah Fratta.

Guidry, 397 F.3d at 310.

II. Facts Relating to Fifth Amendment Claim

During a series of pre-trial suppression hearings to determine the admissibility of Guidry's confession, the trial court heard conflicting evidence regarding whether Guidry asked to speak to his attorney during the custodial interrogation. Guidry maintained that he had, in fact, requested that counsel be present, while the officers taking his statement steadfastly maintained that he did not. In addition, testimony was elicited from several defense attorneys regarding an extraneous conversation that allegedly took place in a state district court judge's chambers following the confession, a conversation which Guidry maintained supported his position that he had asked for an attorney. To resolve this issue, the trial court was forced to make difficult credibility determinations after hearing the following evidence.

On March 3, 1995, Detective Ronnie Roberts received information indicating that Guidry was involved in the murder of Farah Fratta. 3 SR 10.³ Several days later, Guidry, who was being held at the Harris County Jail on unrelated charges, was transported by Roberts and Detective Jim Hoffman to the police station and

³ "SR" refers to the state record of transcribed trial and punishment proceedings, preceded by volume number and followed by page number. "Tr" refers to the transcript of pleadings and documents filed with the court during trial, followed by page number. "R" refers to the record on appeal.

questioned regarding Farah's murder. 3 SR-13, 30-32. Guidry gave the police two written statements. In his initial statement, he claimed that his only role in the murder was to drive the car for co-defendant Joe Prystash, whom Guidry alleged was responsible for killing Farah. 3 SR 44; 30 SR State's Exhibit 73. After Guidry failed a polygraph examination, he gave police a second statement in which he confessed to shooting the victim. 3 SR 45-46; 30 SR State's Exhibit 74. Sergeant Billingsley, who witnessed the signing of the second statement, asked Guidry if he would be willing to do a videotaped walk-through of the crime scene. 3 SR 61-62. Guidry agreed. 3 SR 62. Guidry proceeded to walk the officers through the scene, recounting the chronology of events that took place on the night he murdered Farah. 3 SR 67-69; 30 SR State's Exhibit 156.

Prior to trial, Guidry sought to suppress these incriminating statements. Tr 263-266.⁴ During the February 1997 hearing on this issue, Guidry testified that he asked the officers to contact his attorney so that counsel could be present during the interrogation. 7 SR 166-67, 170, 188. He claimed that he made this request because the attorney who had been appointed to represent him on an unrelated bank robbery charge instructed him to remain silent during any interrogation. 7 SR 155. Guidry stated that, despite his request, the police continued to question him without his attorney present. 7 SR 170. In fact, according to Guidry, Detective Hoffman returned to the interrogation room and stated that he had spoken with Guidry's attorney, who had instructed Guidry, "it was all right for me to answer the questions and don't worry about it,

⁴ The trial court held a hearing on this issue on August 28, 1996. 3 SR 8-103. However, once it became apparent that Guidry's attorneys - Sylvia Yarborough and Robert Scott - would have to testify, the court continued the hearing until February 20, 1997, so that new counsel could be appointed to present Guidry on this issue. 5 SR 19.

you know, it was no problem.” 7 SR 171-72.⁵ In contrast, both Detectives Roberts and Hoffman maintained that Guidry never asked for an attorney to be present during the interview. 3 SR 27, 55.

Detective Roberts testified at both pre-trial suppression hearings that Detective Hoffman read Guidry his *Miranda*⁶ rights in the vehicle when Guidry was transported from his holding cell to the Harris County Sheriff's Department in Houston. 3 SR 16-17, 25; 7 SR 11, 20. According to Detective Roberts, neither he nor Detective Hoffman attempted to contact Guidry's attorney at the time and Guidry never asked to speak with his attorney. 3 SR 21-27; 7 SR 12, 29-33, 203. Moreover, there were no promises, threats, or inducements in connection with Guidry's statements. 3 SR 28.

Detective Hoffman also testified at both hearings that he used his “blue card” to read Guidry his *Miranda* rights on their way to the Sheriff's office. 3 SR 32-33, 52; 7 SR 42, 71; 30 SR State's Exhibit 95. Guidry indicated that he understood the rights, was alert, and did not appear to be intoxicated. 3 SR 34. Once at the interview room, Detective Hoffman attempted, as is his custom, to make Guidry feel comfortable. 3 SR at 35; 7 SR 45. When Guidry elected to make a statement, Hoffman again read Guidry his rights from the form on which Guidry's statement was transcribed. 3 SR 38; 7 SR 48-49. Guidry indicated that he understood each of his rights and wished to waive them. 3 SR 38-39; 7 SR 49. Guidry also initialed each of his rights as well as the front and back of each

⁵ This is, essentially, the same testimony offered by Guidry during the evidentiary hearing held by the district court below on December 13, 2002. EH 16-18.

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

page of the form that contained his statements. 3 SR 40; 7 SR 50-51; 30 SR at SX 73, 73A. Guidry then took and failed a polygraph examination, after which he was again advised of his rights. 3 SR 45; 7 SR 54-55, 58. Hoffman again read Guidry the warnings listed on the statement form, while Detective Bob Tonry read Guidry his rights prior to typing the statement, and Guidry again stated that he understood his rights and wished to waive them. 3 SR 46; 7 SR 58-59. Guidry again initialed the warnings and the statements. 3 SR 49; 7 SR 60; 30 SR at SX 74. Guidry never asked for his attorney, never asked to terminate the interview and was never made any promises, threats, or inducements in connection with his statements. 3 SR 51-55; 7 SR 43-61. Detective Hoffman also confirmed that neither he nor any other officer ever told Guidry that they had contacted his attorney and that the attorney had given Guidry permission to talk. 7 SR 81.

Finally, Sergeant Billingsley testified at both state suppression hearings. Sergeant Billingsley testified that he monitored the interview, witnessed Guidry's second statement, and ensured that Guidry gave the statement voluntarily. 3 SR 60-61, 72; 7 SR 84, 93-94, 30 SR at SX 74. Guidry was never threatened, according to Billingsley, and never asked for his lawyer or to terminate the interview. 3 SR 75-77; 7 SR 89, 93-94.

In an attempt to impeach the officers' testimony, Guidry offered testimony from three defense attorneys regarding a conversation that allegedly took place in Judge Kegan's⁷ chambers in March 1995. Each of the attorneys testified that, while in chambers, there were two officers present who were involved in the investigation of Farah's murder. 3 SR 80-81; 7 SR 104, 139. They

⁷ Judge Kegan was not present during the alleged conversation and was not the judge who presided over either the suppression hearings or Guidry's trial. See 3 SR 1; 7 SR 2.